

Remarks/Arguments

This Response is provided in response to a final Office Action mailed March 22, 2006, in which claims 6, 13, and 20 were objected to due to informalities, claims 1-6 and 15-20 were rejected under 35 U.S.C. §102(b) as being anticipated by prior art, and claims 7, 8-14, and 21 were further rejected under 35 U.S.C. §103(a) as being unpatentable over prior art.

Claim Amendments

The Applicant has provided amendments to claims 6, 13, and 20 in response to the objections raised by the Examiner in the final Office Action mailed March 22, 2006. The amendments do not narrow the scope of the claims but rather have been made to more clearly point out and distinctly claim the subject matter considered by the Applicant as the invention and to provide the appropriate correction to said objections. Further, no new matter has been introduced by the claim amendments and support for the amendments may be found by viewing FIGS. 8 and 9. The Applicant has further provided amendments to claims 1, 8, and 15 to correct a typographical error.

Objections to Claims 6, 13, and 20

The Office Action objected to claims 6, 13, and 20 as being informal due to the claim element "dimensioned for a close fit with the thumb" being improper since the structure of the device cannot depend on any part of a user's hand.

In response to the Objections to Claims 6, 13, and 20, the Applicant has amended claims 6, 13, and 20. Accordingly, the Applicant respectfully requests the Examiner remove the Objections from claims 6, 13, and 20, and pass the same to allowance.

Rejection of Claims 1-6 and 15-20 Under 35 U.S.C. §102(b)

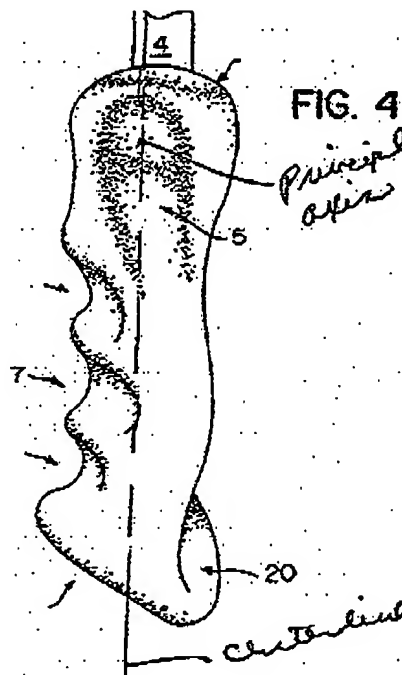
The Office Action rejected claims 1-6 and 15-20 under 35 U.S.C. §102(b), as being anticipated by United States Patent No. 5,692,265 issued to David F. Dalury, December 2, 1997 (Dalury '265).

Anticipation means a lack of novelty, and is a question of fact which is reviewed by the reviewing court using a substantial evidence standard. *Brown v. 3M*, 60 USPQ2d 1375 (Fed. Cir. 2001); *Baxter Int'l, Inc. v. McGaw, Inc.*, 47 USPQ2d 1225 (Fed. Cir. 1998). To anticipate a claim, every limitation of the claim must be found in a single prior art reference, arranged as in the claim. *Karsten Mfg. Corp. v. Cleveland Golf Co.*, 58 USPQ2d 1286 (Fed. Cir. 2001). *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 122 S.Ct. 1831 (2002). Each such limitation must be found either expressly or inherently in the prior art reference. *Schering Corporation v. Geneva Pharmaceuticals, Inc.*, 02-1540, Decided August 1, 2003 (Fed. Cir. 2003).

Dalury '265 fails to identically show the claim limitation of: "an appendage support member projecting laterally from the main body portion, the appendage support member comprising a top surface that provides a concave recess wherein a principle axis of the concave recess passing through a center of curvature and a vertex of the concave recess is substantially perpendicular to and offset from a centerline of the main body portion, and a substantially continuous convex shaped bottom surface configured to provide a ergonomic support surface for an appendage of a user." of claims 1, 8, and 15. Therefore, Dalury '265 fails to provide a basis for an anticipation rejection under 35 U.S.C. § 102(b) of independent claims 1, 8, and 15.

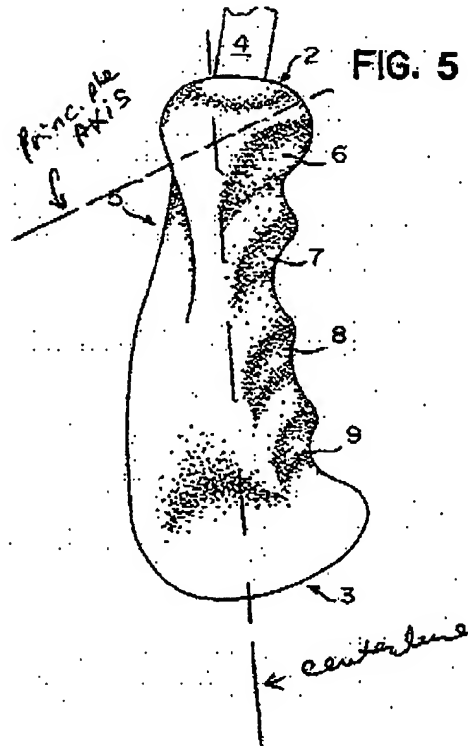
By viewing FIGS. 1, 3, 4, 5, and 6 of Dalury '265, and in particular FIG. 3, it is clear that Dalury '265 shows an appendage support member (taken to be the region between thumb indentation 5, taken to be the top surface of said appendage support member, and index digit indentation 6, taken to be the bottom surface of said appendage support member (see Column 5, lines 35 and 36 to confirm that sign numbers 5 and 6 of FIG. 3 are indentations)), is incorporated within the main body portion (see FIG. 4 showing the thumb indentation 5 substantially centered within the main body portion of the handle), rather than projecting laterally from the main body portion. Accordingly, the appendage support member of Dalury '265 fails to anticipate the appendage support member of Applicant's independent claims 1, 8, and 15. Dalury '265 affirms that the appendage support member is within the handle at Column 5, lines 11 through 17.

FIG. 3 further shows the appendage support includes a top surface that provides a concave recess (thumb indentation 5), which inherently has a center of curvature and vertex. However, a principle axis of the thumb indentation 5, passing through the center of curvature and the vertex, passes through the centerline of the main body portion, rather than being offset from the centerline of the main body portion, as claimed by Applicant in independent claims 1, 8, and 15; and as shown by the top plan view of the thumb indentation 5 shown by FIG. 4 of Dalury '265; reproduced below with notation by Applicant for clarity.



Accordingly, Dalury '265 fails to identically show that a principle axis passing through the center of curvature and a vertex of the thumb indentation 5, is offset from a centerline of the Dalury '265 inventive handle 1. Also, the principle axis passing through the center of curvature and vertex of thumb indentation 5, is not perpendicular to the centerline of the main body portion of the Dalury '265 inventive handle 1. This non-perpendicularity of the principle axis and the centerline of the main body portion of the Dalury '265 inventive handle 1, is shown by the side elevational view of the thumb

indentation 5 shown by FIG. 5 of Dalury '265; reproduced below with notation by Applicant for clarity.



To affirm the non-perpendicularity of said principle axis relative to said centerline, the Applicant directs the reader to Column 5, lines 55 through 59 of Dalury '265 which states for clarity:

“The digit indentations are angled with respect to a centerline drawn through the ergonomic handle longitudinally; preferably the angles are about 35 to 60 degrees for the digit indentations, increasing from the index digit to the small digit, and about 20 degrees for the thumb indentations.”

Accordingly, Dalury '265 fails to identically show that a principle axis passing through the center of curvature and a vertex of the thumb indentation 5 is substantially perpendicular to a centerline of the Dalury '265 inventive handle 1.

FIGS. 1, 3, 4, 5, and 6 of Dalury '265 collectively, and in particular FIG. 3, clearly show that the bottom surface (taken to be the index digit indentation 6) of appendage support member (taken to be the region between the thumb indentation 5 and index digit indentation 6) is an indentation and not a substantially continuous convex shape, rather the surface is the opposite of convex, it is concave. Those skilled in the art understand that the term "indentation" means a recess, or depression neither of which can be taken to be a substantially continuous convex shaped bottom surface configured to provide an ergonomic support surface for an appendage of a user. FIG. 1 of Dalury '265 clearly shows that the indentations 5, 6, 7, 8, and 9 provide the support surface for a user appendage, which is clearly substantiated by Dalury '265 in Column 5, lines 52-54. Accordingly, Dalury '265 fails to identically show that the appendage support member comprises a substantially continuous convex shaped bottom surface configured to provide an ergonomic support surface.

Therefore, for the reasons stated hereinabove, Dalury '265 fails to anticipate independent claims 1, 8, and 15, because every limitation within each independent claim is not found in Dalury '265, nor are the elements of Dalury '265 arranged in accordance with the claimed invention.

Accordingly, the Applicant requests withdrawal of the rejection of claims 1-6 and 15-20 under 35 U.S.C. §102(b), and passage of same to allowance.

Rejection of Claims 7 and 21 Under 35 U.S.C. §103(a)

The Office Action rejected claims 7 and 21 under 35 U.S.C. §103(a) as being unpatentable over Dalury '265. The Applicant respectfully traverses this rejection. Because Dalury '265 fails to provide the basis for sustaining an anticipation rejection of claims 1 and 15 under 35 U.S.C. § 102(b), and dependent claims 7 and 21 depend from their respective patentable independent claims 1 and 15, and serve to provide additional limitations to their respective patentable independent claims 1 and 15, Dalury '265 fails to provide a basis for sustaining an obviousness rejection of claims 7 and 21 under 35 U.S.C. § 103(a).

Accordingly, the Applicant requests withdrawal of the rejection of claims 7 and 21 under 35 U.S.C. § 103(a), and passage of same to allowance.

Rejection of Claims 8-14 Under 35 U.S.C. §103(a)

The Office Action rejected claims 8-14 under 35 U.S.C. §103(a) as being unpatentable over Dalury '265 in view of United States Patent No. 6,502,314 issued to Michael S. McCatty, January 7, 2003 (McCatty '314). The Applicant traverses this rejection.

Because Dalury '265 fails to provide the basis for sustaining an anticipation of independent claim 8 under 35 U.S.C. § 102(b), and McCatty '314 fails to cure the deficiencies of Dalury '265. Neither Dalury '265 or McCatty '314, alone or in combination, provide a basis for sustaining a rejection of claims 8-14 under 35 U.S.C. § 103(b).

In particular, the prior art reference[s] must teach or suggest each limitation of the claimed invention.

In the present case, the Dalury '265 prior art reference not only fails to teach or suggest at least the claim limitation of the appendage support member comprising...“a substantially continuous convex shaped bottom surface configured to provide an ergonomic support surface for an appendage of a user.” Dalury '265 teaches away from such a limitation by teaching the inventive handle 1 of Dalury '265 provides indentations for the thumb, index finger, long finger, ring finger, and small finger (see Column 5, lines 11 through 17). An indentation does not constitute a substantially continuous convex shaped bottom surface.

Dalury '265 fails to teach or suggest an appendage support member projecting from the main body. Dalury '265 teaches that all of the indentations are provided within the longitudinal surface 11 (see Column 5, lines 12 through 20). Because the appendage support member (as identified by the Examiner is “near 5”) is required to have a top and bottom surface, the Applicant must presume the Examiner is identifying the region of the inventive handle 1 of Dalury '265 between indentations 5 and 6 to be the appendage support member, and because the indentations are all within the handle, the region between

the indentations define the outer boundaries of the longitudinal handle, and are accordingly not a member protruding from the handle 1 of Dalury '265.

Dalury '265 further fails to teach or suggest a principle axis passing through a center of curvature and a vertex of the concave recess is substantially perpendicular to and offset from a centerline of the main body.

It is clear that if the indentations are positioned on an angle to the centerline, than a principle axis passing through the inherent center of curvature and the vertex of each indentation will not be perpendicular to the centerline. Dalury '265 teaches away from the perpendicularity of the principle axis relative to the centerline in Column 5, lines 55 through 60.

Because Dalury '265 fails to teach or suggest each limitation of independent claim 8, and McCatty '314 fails to cure the deficiencies of Dalury '265, neither Dalury '265 or McCatty '314, alone or in combination, provide a basis for an obviousness rejection under 35 U.S.C. § 103(a) of claims 8-14. Accordingly, the Applicant requests the withdrawal of the rejection of claims 8-14 under 35 U.S.C. § 103(a), and the passage of same to allowance.

Conclusion

The Applicant respectfully requests reconsideration and allowance of all of the claims pending in the application. This Response is intended to be a complete response to the final Office Action mailed March 22, 2006.

The Applicant submits that the amendments to the claims do not add new matter, distinguish the present invention from all prior art of record, and serves to place the instant Application for Letters Patent in condition for allowance, and accordingly requests the Examiner to pass Patent Application Serial No. 10/822,286 to allowance.

Should any questions arise concerning this response, the Examiner is invited to contact the below listed Attorney.

Respectfully submitted,

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